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Connor & Simpson; Reps. Brady, Kenton, D.E. Williams,
B. Short, Atkins, Outten & Wilson

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 64

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO FLOODPLAIN AND DRAINAGE
STANDARDS, WETLANDS AND SUBAQUEOUS LANDS.

1 WHEREAS, Delaware is the lowest state in the USA with a mean elevation of just 60 feet above sea level; and

2 WHEREAS, Delaware is vulnerable to flooding from rising sea levels and coastal storm systems; and

3 WHEREAS, Over 331 square miles or 17% of Delaware's land mass are within a mapped 100 year flood plain;

4 and

5 WHEREAS, Approximately 621 road miles and over 18,000 structures are in the 100 year floodplain; and

6 WHEREAS, Poor drainage standards and inconsistent municipal codes have contributed to chronic and nuisance
7 flooding throughout the state resulting in state expenditures each year to resolve drainage problems and have cost taxpayers
8 an estimated \$65,000,000 since 1996; and

9 WHEREAS, Those inadequate and inconsistent drainage standards cause an adverse impact to Delaware
10 landowners affecting the use and enjoyment of their personal property; and

11 WHEREAS, DNREC should be afforded greater flexibility to waive regulatory requirements for emergencies to
12 allow activities that protect public health and safety and property;

13 NOW THEREFORE:

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

15 Section 1. Amend Title 7 of the Delaware Code by enacting a new "Chapter 44 FLOOD MITIGATION
16 STANDARDS as follows:

17 "CHAPTER 44. FLOOD MITIGATION STANDARDS

18 §4401. Purpose.

19 It is the purpose of this Chapter to promote the public health, safety and general welfare, and to:

20 Protect human life, health and welfare; encourage the utilization of appropriate construction practices in order to prevent or
21 minimize flood damage in the future; minimize flooding of water supply and sanitary sewage disposal systems; maintain

natural drainage; reduce financial burdens imposed on the state, local community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding; minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; minimize prolonged business interruptions; minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges; reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions; minimize the impact of development on adjacent properties within and near flood prone areas; provide that the flood storage and conveyance functions of the floodplain are maintained; minimize the impact of development on the natural and beneficial functions of the floodplain; prevent floodplain uses that are either hazardous or environmentally incompatible; and improve drainage standards to reduce threats to community welfare.

§4402. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(a) 'Department' shall mean the Department of Natural Resources and Environmental Control.

(b) Federal Emergency Management Agency (FEMA): The federal agency with the overall responsibility for administering the National Flood Insurance Program.

(c) Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(d) 'Secretary' shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(e) 'State' shall mean the State of Delaware.

§ 4403 Rules.

The Secretary shall, within 12 months of the effective date of this legislation, develop guidance and minimum standards for improved floodplain management and drainage within the state after consultation with a Floodplain and Drainage Advisory Committee (Committee) appointed by the Secretary, to include public and private interests, as well as appropriate state, federal and municipal agencies, and governmental subdivisions of the State. Floodplain and Drainage standards shall include, but not be limited to definitions, general requirements and criteria for local adoption by local governments within the State of Delaware. The Committee will consider nationally recognized standards and best practices. The Committee may also evaluate the capacity of local governments to implement standards and may make recommendations to the Secretary as appropriate, including, but not limited to the development of model ordinances. The Committee shall also examine the adequacy of existing requirements, policies and practices associated with notification to

prospective property purchasers of existing flooding or drainage issues. Prior to finalizing such standards the Department shall offer an opportunity for the public to comment on the proposed standards and will consider all relevant comments. All counties and municipalities shall adopt, within 12 months following adoption by the Secretary, those minimum standards for Floodplain and Drainage through regulation, local ordinance or incorporation by reference into existing local code. Counties and municipalities may also apply to the Department to review existing language to determine if existing codes and ordinances are “functionally equivalent” to minimum standards adopted by the Secretary”.

§ 4404 Approval by the Department.

The Department shall make investigations and assemble such data as it deems necessary for a proper review and approval of the local government ordinances adopting new and/or revised standards for Floodplains and Drainage. The Department may employ or make such agreements with hydrologists, geologists, engineers, or other expert consultants and such assistants, as it deems necessary to carry out the provisions of this Chapter. Once adopted, the Department will conduct a tri-annual review of local ordinances to ensure that the latest standards and updated maps are uniformly applied throughout the state.

§ 4405 Appeals.

(a) Except as otherwise provided in this Chapter, any action or determination by the Department under this Chapter shall be subject to appeal to the Environmental Appeals Board in accordance with the provisions of 7 Del. C. § 6008.

(b) Appeals of decisions by the Environmental Appeals Board shall be conducted pursuant to 7 Del. C. § 6009.

Section 2. Further amend Title 7 Del C. Chapter 66, §6607 by adding a new subsection (f) to read as follows:

“(f) The Secretary may waive any provision of the Regulations adopted pursuant to this Chapter when warranted under the following circumstances:

1. Life threatening emergencies.
2. Actions required for public safety for which sufficient time is not available to follow the Regulations.
3. When imminent or catastrophic damage or loss of major infrastructure is likely if all provisions of the Regulations are adhered to.
4. Where the authority of the Department under Chapter 66 overlaps with another statute, including but not limited to Shellfish Grounds (Chapter 19), Beach Preservation (Chapter 68) or Subaqueous Lands (Chapter 72) provided that the following criteria are met:

- 81 a. If, in the opinion of the Secretary, equal environmental impact review and regulation of
82 the activity would be provided by either statute; and
83 b. Waiver of these Regulations would not be contrary to the purposes of 66.”

84 Section 3. Further amend Title 7 Del C. Chapter 72, §7205 by adding a new subsection (c) to read as follows:

85 “(c) The Secretary may waive any provision of the Regulations adopted pursuant to this Chapter when warranted
86 under the following circumstances:

- 87 1. Life threatening emergencies.
88 2. Actions required for public safety for which sufficient time is not available to follow the
89 Regulations.
90 3. When imminent or catastrophic damage or loss of major infrastructure is likely if all
91 provisions of the Regulations are adhered to.
92 4. Where the authority of the Department under Chapter 72 overlaps with another statute,
93 including but not limited to Shellfish Grounds (Chapter 19), Beach Preservation (Chapter
94 68) or Wetlands (Chapter 66) provided that the following criteria are met:
95 a. If, in the opinion of the Secretary, equal environmental impact review and
96 regulation of the activity would be provided by either statute; and
97 b. Waiver of these Regulations would not be contrary to the purposes of Chapter 72.”

SYNOPSIS

This legislation authorizes the Department of Natural Resources and Environmental Control to adopt guidance and minimum standards to minimize risk from flooding with the input from a stakeholder advisory group. Such standards or equivalent standards shall subsequently be adopted by local governments to the extent that existing requirements do not meet the minimum standards established under this legislation. The legislation also authorizes the DNREC Secretary to waive regulatory requirements of the Wetlands and Subaqueous Lands Regulations to protect public health and safety and to prevent catastrophic damage to property.

Author: Senator McBride